

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ADRIANA AGOSTINI,

Plaintiff,

Docket No.
16 Civ. 7119 (DLC)

- against -

**DECLARATION OF
MARK H. BIERMAN**

EMBLEMHEALTH, INC. and ALAN WEISHAUPT,
JONATHAN FRANDSEN and DANIEL BYRNE,
Individually and As Employers,

Defendants.
-----X

MARK H. BIERMAN declares pursuant to 28 U.S.C. § 1746 that the following is true and correct under the penalties of perjury:

1. I am the principal of Bierman & Associates, attorneys for Plaintiff Adriana Agostini (“Plaintiff”) in the above-referenced matter. This declaration is respectfully submitted in opposition to the motion of defendants Emblemhealth, Inc. and Alan Weishaupt, Jonathan Frandsen and Daniel Byrne (“Defendants”) for summary judgment pursuant to Fed R. Civ. Proc. Rue 56.
2. Annexed hereto as Exhibit 1 is a true copy of Plaintiff’s Complaint filed with this court.
3. Annexed hereto as Exhibit 2 is a true copy of the Answer of defendant EmblemHealth, Inc. filed with this court
4. Annexed hereto as Exhibit 3 is a true copy of the Answer of defendants Alan Weishaupt, Jonathan Frandsen and Daniel Byrne filed in this court.
5. Annexed hereto as Exhibit 4 is a true copy of the collective bargaining agreement between EmblemHealth and Local 153 produced by Defendants at D000001-36

6. Annexed hereto as Exhibit 5 is a true copy of a doctor's letter concerning Adriana Agostini dated ## .
7. Annexed hereto as Exhibit 6 is a true copy of two organizational charts produced by Defendants at D000237-7 .
8. Annexed hereto as Exhibit 7 is a true copy of a document submitted by Agostini in connection with her 2009 New York State Human Rights Complaint.
9. Annexed hereto as Exhibit 8 is a true copy a memo regarding Adriana Agostini and Jane Charles.
10. Annexed hereto as Exhibit 9 is a true copy of a document entitled Final Written Warning dated 10-27-09.
11. Annexed hereto as Exhibit 10 is a true copy of a letter from MetLife to Adriana Agostini dated September 17, 2014.
12. Annexed hereto as Exhibit 11 is a true copy of email exchanges between Daniel Byrne and Adriana Agostini, dated in December 2011.
13. Annexed hereto as Exhibit 12 is a true copy of Plaintiff's completed Reasonable Accommodation Request form dated 8-8-14
14. Annexed hereto as Exhibit 13 is a true copy of an email exchange between Grace-Adams Cunningham and Toni Kennedy and others dated August 11, 2014. .
15. Annexed hereto as Exhibit 14 is a true copy of EmblemHealth Universal Complaint form from Adriana Agostini regarding 9/29/14 incident.
16. Annexed hereto as Exhibit 15 is a true copy of a printout of a document produced by defendants at D011929.

17. Annexed hereto as Exhibit 16 is a true copy of a Reasonable Accommodation Request form for Adriana Agostini dated 8/11/14.
18. Annexed hereto as Exhibit 17 is a true copy of records from the NYS Unemployment Insurance division concerning Plaintiff.
19. Annexed hereto as Exhibit 18 is a true copy of a letter dated September 12, 2014 to Arnette Waterford Reeves .
20. Annexed hereto as Exhibit 19 is a true copy of severance letters from Diane M. McGuire to various EmblemHealth employees.
21. Annexed hereto as Exhibit 20 is a true copy of a letter dated September 17, 2014 from Steven DeLauro.
22. Annexed hereto as Exhibit 21 is a true copy of an email dated 9/18/14 from Dianne McGuire with attachments produced by Defendants at D11685-11690.
23. Annexed hereto as Exhibit 22 is a true copy of a email exchange dated 9-114 produced by Defendants at D11674.
24. Annexed hereto as Exhibit 23 is a true copy of an email document dated 10/2/14 with attachment produced by Defendants at 11672
25. Annexed hereto as Exhibit 24 is a true copy of the Defendant Emblem Health's Response to Contention Interrogatories.
26. Annexed hereto as Exhibit 25 is a true copy of an email exchange involving Adriana Agostini dated 9/23/14 and 9/24/14 produced by Defendants at D003630-31
27. Annexed hereto as Exhibit 26 is a true copy of an email from Adriana Agostini dated 9/11/14.

28. Annexed hereto as Exhibit 27 is a true copy of an email from Adriana Agostini dated 9/23/14 and forwarding email produced by Defendants at D011670-71.

29. Annexed hereto as Exhibit 28 is a true copy of an email from Adriana Agostini dated 10/29/14 and forwarding email produced by Defendants at D011697.

30. Annexed hereto as Exhibit 29 is a true copy of a Social Security Administration determination produced by Defendants at SSA000555-562.

31. Annexed hereto as Exhibit 30 is a true copy of Social Security Administration Field Disability Report produced by Defendants at SSA000563-573.

32. Annexed hereto as Exhibit 31 is a true copy of an email dated 9/4/14 with attachment produced by Defendants at D003607.

33. Annexed hereto as Exhibit 32 is a true copy of an email dated 9/4/14 with attachment produced by Defendants at D003593.

34. Annexed hereto as Exhibit 33 is a true copy of an email dated 9/5/14 with attachment produced by Defendants at D003609.

35. Annexed hereto as Exhibit 34 is a true copy of an email dated 9/5/14 with attachment produced by Defendants at D003614.

36. Annexed hereto as Exhibit 35 is a true copy of an email dated 9/9/14 with attachment produced by Defendants at D003621.

37. Annexed hereto as Exhibit 36 is a true copy of an email dated 9/11/14 with attachment produced by Defendants at D003653.

38. Annexed hereto as Exhibit 37 is a true copy of an email dated 8/27/14 with Seniority Clerical printout attached.

- 39. Annexed hereto as Exhibit 38 is a true copy of the deposition of Alan Weishaupt
- 40. Annexed hereto as Exhibit 39 is a true copy of the deposition of Daniel Byrne
- 41. Annexed hereto as Exhibit 40 is a true copy of the deposition of Jonathan Frandsen.
- 42. Annexed hereto as Exhibit 41 is a true copy of the deposition of Diane McGuire.
- 43. Annexed hereto as Exhibit 42 is a true copy of extracts from the deposition of Adriana Agostini.
- 44. No documents showing Steven DeLauro or Makar as having had training or recent experience in either an Imaging Clerk or Junior Clerk positions in the UDC department.

Dated: New York, New York
March 13, 2018

Bierman & Associates
Attorneys for Plaintiff

s/Mark H. Bierman
BY: MARK H. BIERMAN
17 Battery Place, Suite 204
New York, New York 10004
212-363-6960